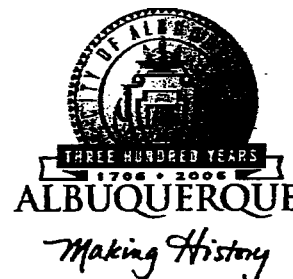


CITY OF ALBUQUERQUE

February 7, 2006

ADMINISTRATIVE INSTRUCTION NO. 7-1 (Revised

SUBJECT: Substance Abuse Policy Manual



A. **PURPOSE:** The City has a vital interest in maintaining safe, healthful and efficient working conditions for its employees. Being under the influence of alcohol, or the presence of certain drugs in the body system, may pose serious safety and health risks not only to the user but to all those in contact with the user. By resolution, the City Council adopted an employee substance abuse and drug and alcohol testing policy and directed the Chief Administrative Officer to promulgate directives to implement that policy. This policy manual was adopted by the Chief Administrative Officer to provide a detailed explanation of the City of Albuquerque substance abuse policy and procedures. The purpose of this policy is to provide for a safer environment for all employees and the public and comply with Federal mandates regarding substance abuse in the workplace. It is intended that this Substance Abuse Policy Manual will be interpreted and implemented in a manner consistent with anti-discrimination requirements including the Americans with Disabilities Act. The City of Albuquerque has a zero-tolerance policy for testing positive for drugs and/or alcohol and for refusing to test.

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B. **APPLICABILITY:** Applicants for City employment in safety-sensitive positions are subject to pre-employment drug testing. Employees in safety-sensitive positions are subject to random, return to duty, follow-up, and post-accident drug/alcohol testing. Employees who are placed, transferred, or promoted to safety-sensitive positions are subject to drug/alcohol testing. All employees are subject to reasonable suspicion drug/alcohol testing. It shall be the responsibility of the Director of the Human Resources Department to determine which positions are safety-sensitive and to notify the affected employees of their status.

Part 1 of this policy manual applies to public safety employees and all other employees who have been designated safety-sensitive pursuant to the City's own authority. *Part 1* also requires reasonable suspicion testing for all City employees.

Part 2 applies to employees who are safety-sensitive because they are required to hold a Commercial Drivers License by the regulations of the Federal Highway Administration.

Part 3 applies to Transit Department employees who are designated safety-sensitive by the regulations of the Federal Transit Administration.

Part 4 addresses the City's efforts to encourage employees to voluntarily seek assistance regarding substance abuse through the Employee Assistance Program.

Bruce J. Perlman, Ph.D.
Chief Administrative Officer

City of Albuquerque

Substance Abuse Policy Manual

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Part 2: Commercial Driver's License Policy *Not Included*

Part 2 of the City's Substance Abuse Policy Manual applies to all City employees who are required to hold a Commercial Driver's License, and who perform safety-sensitive functions as defined by the FHWA. CDL holders who work for the City Transit Department are covered under Part 3 of the policy that covers safety-sensitive employees that fall under the Federal Transit Administration.

Part 3: Transit Department Policy *Not Included*

Part 3 of the City's Substance Abuse Policy Manual applies to all safety-sensitive Transit Department employees when performing any transit-related business.

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City of Albuquerque

Substance Abuse Policy Manual

Part 1: City-Wide Policy

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**CITY OF ALBUQUERQUE
SUBSTANCE ABUSE POLICY MANUAL - PART 1
CITY-WIDE POLICY**

A. PURPOSE

The City has a vital interest in maintaining safe, healthful and efficient working conditions for its employees. Being under the influence of alcohol, or the presence of certain drugs in the body system, may pose serious safety and health risks not only to the user but to all those in contact with the user. By resolution, the City Council adopted an employee substance abuse and drug and alcohol testing policy and directed the Chief Administrative Officer to promulgate directives to implement that policy. This policy manual was adopted by the Chief Administrative Officer to provide a detailed explanation of the City of Albuquerque substance abuse policy and procedures. The purpose of this policy is to provide for a safer environment for all employees and the public and establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988. It is intended that this Substance Abuse Policy Manual will be interpreted and implemented in a manner consistent with anti-discrimination requirements including the Americans with Disabilities Act. Consistent with the Drug-free Workplace Act of 1988, all employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including City premises, City vehicles, while in uniform or while on City business. All employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination. The City of Albuquerque has a zero-tolerance policy for testing positive for drugs and/or alcohol and for refusing to test.

B. APPLICABILITY

Applicants for City employment in safety-sensitive positions are subject to pre-employment drug testing. Employees in safety-sensitive positions are subject to pre-employment, random, reasonable suspicion and post-accident drug/alcohol testing. All employees are subject to reasonable suspicion drug/alcohol testing. It shall be the responsibility of the Director of the Human Resources Department to determine which positions are safety-sensitive and to notify the affected employees of their status.

Part 1 of this policy manual applies to public safety (police, fire, aviation police, open space rangers, sworn animal services, security and corrections) employees and all other employees who have been designated safety-sensitive pursuant to the City's own authority.

Part 1 also requires reasonable suspicion testing for all City employees. Part 2 applies to employees who are safety-sensitive because they are required to hold a Commercial Drivers License by the regulations of the Federal Motor Carrier Safety Administration. Part 3 applies to Transit Department employees who are designated safety-sensitive by the regulations of the Federal Transit Administration. Part 4 addresses the City's efforts to

encourage employees to voluntarily seek assistance regarding substance abuse through the Employee Assistance Program/Substance Abuse Program.

C. DEFINITIONS

Accident means an occurrence associated with the operation of City equipment, machinery or vehicles, if as a result—

- (1) An individual dies;
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
- (3) One or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

Adulterated Specimen is a verified specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl, contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

Breath Alcohol Technician (BAT) is a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

Canceled Test is a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be canceled. A canceled test is neither positive nor negative.

Collection/Testing Site means a place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test and/or for the purpose of providing breath for an alcohol test.

Department of Transportation (DOT) encompasses all DOT agencies, including, but not limited to, the US Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA) and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

Designated Employer Representative (DER) is an employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communication for the employer, consistent with the requirements of 49 CFR Parts 40, 382 and 655, as amended.

Dilute Specimen is a specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling Damage means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT) is a device approved by the NHTSA for the evidential testing of breath at the 0.02 and greater alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

HHS is the Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Invalid drug test means the result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Medical Review Officer (MRO) means a licensed physician (medical doctor or doctor of osteopathy) who is responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanations for certain drug test results.

Negative Dilute means a drug test result which is negative for the five drug/drug metabolites and/or the ten drug/drug metabolites but has a specific gravity value lower than expected for human urine.

Negative Drug Test Result for a drug test means a verified presence of the identified drug or its metabolite below the minimum levels specified in 49 CFR Part 40, as amended.

Negative Alcohol Test Result for an alcohol test means an alcohol concentration of less than 0.02 BAC.

Non-negative test result is a test result found to be adulterated, substituted, invalid, or positive for drug/drug metabolites.

Positive drug test result for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in Attachment B.

Positive alcohol test result for an alcohol test means a confirmed alcohol concentration of 0.02 BAC or greater.

Positive test result means a positive drug test result and/or a positive alcohol test result.

Prohibited drug means marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels at or above the minimum thresholds specified in 49 CFR Part 40, as amended. For sworn members of the Albuquerque Police Department, members of Aviation Police, and Open Space Enforcement Officers, ***prohibited drug*** shall mean marijuana, cocaine, opiates, amphetamines, phencyclidine, barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene at levels at or above the minimum thresholds specified in Attachment A.

Public safety employees are sworn members of the Albuquerque Police and Fire Departments; sworn members of the Aviation Police, Open Space Rangers and Animal Services personnel; Security Officers, and the security staff in the Corrections Department.

Refusal to test. A refusal to test includes, but is not limited to, the following circumstances:

- Failure to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer.
- Failure to remain at the collection/testing site until the testing process is complete;
- Failure to provide a urine or breath specimen for any drug or alcohol test required by Part 40, as amended or DOT agency regulations;
- In the case of a directly observed or monitored collection in a drug test, failure to permit the observation or monitoring of your provision of a specimen;

- Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Failure or decline to take a second test the employer or collector has directed you to take;
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the employer as part of the "shy bladder" or "shy lung" procedures;
- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process) or verbal or written refusal to provide a breath/urine specimen;
- If the MRO reports that there is a verified adulterated or substituted test result;
- Failure or refusal to sign Step 2 of the alcohol testing form.
- Failure to remain at the scene of an accident prior to submission to drug/alcohol tests without a legitimate explanation;
- Failure to refrain from consuming alcohol within eight (8) hours following involvement in an accident without first having submitted to post accident drug/alcohol tests;
- Providing false information in connection with a drug test; and
- Engaging in conduct that clearly obstructs the testing process.

Safety-sensitive employee means a City employee who performs the duties of a safety-sensitive position as determined by the Director of the Human Resources Department.

Safety-sensitive position means a City position which the Director of the Human Resources Department has determined should be classified as safety-sensitive. At a minimum, under Part 1 of this policy manual all public safety employees and employees with access to Controlled Substances will be classified as safety-sensitive. The following criteria shall be used as a guide for determining additional positions to be classified as safety-sensitive; the extent to which the job responsibilities impact upon the safety of the public; the extent to which the job responsibilities expose the employee or co-worker to hazardous conditions; and, the extent to which the job responsibilities require responsibility for the physical safety of others.

Substance Abuse Professional (SAP) means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders and who is qualified to act as a SAP under 49 CFR Part 40.

Substituted Specimen means a verified specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

Validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was dilute, or if the specimen was substituted.

Verified negative test means a drug test result reviewed by a medical review officer and determined not to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 CFR Part 40, as amended or specified in Attachment A for SAFE 10 tests.

Verified positive test means a drug test result reviewed by a medical review officer and determined to contain prohibited drugs or their metabolites at or above the cutoff levels specified in 49 CFR Part 40, as amended or specified in Attachment A for SAFE 10 tests.

D. EDUCATION AND TRAINING

This policy manual shall be provided to every City employee and training and education programs shall be made available. Employees will have access to the corresponding federal regulations including 49 CFT Part 40, as amended. Supervisors will receive a minimum of sixty minutes of drug and alcohol specialized training designed to promote the necessary skills to:

- Inform employees of this policy,
- Enforce this policy,
- Identify the signs of drug and/or alcohol use,
- Intervene constructively, and
- Integrate an employee effectively back into his/her work group following intervention and/or treatment.

Non-supervisory employees will receive a minimum of sixty minutes training on the effects and consequences of prohibited drug and/or alcohol use on personal health, safety, and the work environment.

E. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following.

(1) **Illegally Used Controlled Substance or Drugs:** Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for

medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body at or above the minimum thresholds is a violation of this policy. All employees will be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine.

Illegal use of these five drugs is prohibited at all times and thus, employees may be tested for these drugs anytime that they are on duty. Additionally, sworn members of Albuquerque Police, Aviation Police and Open Space Officers will be tested for marijuana, cocaine, amphetamines, opiates, phencyclidine, barbiturates, benzodiazepines, methadone, methaqualone, and propoxyphene. Illegal use of these ten drugs is prohibited at all times and thus, employees may be tested for these drugs anytime that they are on duty.

(2) Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to supervisory personnel in accordance with the Personnel Rules and Regulations. The employee is required to provide a written release from their personal physician indicating that the employee can perform their job functions while under the influence of the prescribed drug.

A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of prescription and/or non-prescription drugs while performing City business is prohibited.

(3) Alcohol: The use of beverages containing alcohol or substances (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while on duty is prohibited. An alcohol test can be performed any time an employee is on duty.

F. PROHIBITED CONDUCT

(1) All employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body at or above the minimum thresholds defined in 49 CFR PART 40, as amended, or defined in Attachment A for SAFE 10 tests.

- (2) Each employee is prohibited from consuming alcohol while performing job functions or while on-call to perform job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The employee will subsequently be relieved of his/her on-call responsibilities and may be subject to disciplinary action.
- (3) The City shall not permit any employee to perform or continue to perform their job functions if it has actual knowledge that the employee is using or has used alcohol, has used a controlled substance, or has adulterated or substituted a test specimen for controlled substances.
- (4) Each employee is prohibited from reporting to work or remaining on duty while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.
- (5) Employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- (6) No employee shall consume alcohol within four (4) hours prior to the performance of job functions.
- (7) Employees are prohibited from possessing any amount of alcohol while on duty, unless the alcohol is manifested and is being transported as part of a shipment.
- (8) The City under its own authority also prohibits the consumption of alcohol during lunch periods, rest breaks, split shift breaks, or anytime the employee is in uniform.
- (9) Consistent with the Drug-free Workplace Act of 1988, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including City premises, City vehicles, while in uniform or while on City business.

G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1988, all employees are required to notify the City of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action, up to and including termination.

H. PRE-EMPLOYMENT TESTING

(1) All offers of employment for safety-sensitive positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a safety-sensitive position unless the applicant takes a drug test with a verified negative result.

(2) A non-safety-sensitive employee shall not be placed, transferred or promoted into a safety-sensitive position until the employee takes a drug test with a verified negative result.

(3) If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of one year. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40, as amended, and the approval of the City and a negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

(4) When an employee being placed, transferred or promoted from a non-safety-sensitive position to a safety-sensitive position submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with section N herein.

(5) If a pre-employment/pre-transfer/promotion test is canceled, the City will require the applicant to take and pass another pre-employment drug test.

(6) All applicants or employees being placed, transferred, or promoted from a non-safety-sensitive position to a safety sensitive position are required to execute an authorization form allowing the City to obtain past drug and alcohol test results, including any refusals to test, from each company for whom the employee worked for the previous two years.

(7) In instances where a safety sensitive employee is on extended leave for a period of 90 days or more regardless of reason, the employee will be required to take a drug test and have a negative test result prior to the conduct of safety-sensitive job functions.

I. REASONABLE SUSPICION TESTING

(1) An employee of the City shall be required to undergo a drug/alcohol test if there is reasonable suspicion that the employee's alcohol or drug use could impair job performance and/or safety.

(2) Reasonable suspicion shall mean that there is objective evidence, based upon known specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that would lead a reasonable person to believe that the employee:

- a) is under the influence of alcohol or drugs while on duty; or,
- b) is in possession of or using, transferring, selling or purchasing alcohol or drugs during work hours including lunch or break or while on City property or in a City vehicle; or,
- c) is a public safety employee who has recently illegally possessed, transferred, used or sold a prohibited drug.

(3) An employee's admission of abuse of alcohol or use of prohibited drugs to a supervisor in his/her chain of command, an EAP Counselor, or a provider of medical services under contract to the City shall constitute reasonable suspicion when the use or abuse could impair job performance and/or safety and the employee is not already a participant in a drug/alcohol treatment program.

(4) The Department shall be responsible for transporting the employee to the testing site. Supervisors are to avoid placing themselves or others into situations which might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with the Personnel Rules and Regulations. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on leave with pay status pending disciplinary action in accordance with section J herein.

(5) When an employee reports to the Employee Health Center for treatment or examination and the health care provider has a reasonable suspicion that the employee is a substance abuser, the health care provider shall refer the employee to the DER who shall refer the employee to the SAP for substance abuse testing and/or assessment. The DER shall notify the appropriate department director or his/her designee who shall place the employee on leave with pay status in accordance with the Personnel Rules and Regulations.

(6) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation within 24 hours of the observation or prior to the release of the test results. This written record shall be submitted to the Substance Abuse Program Manager and the City's Medical Review Officer and shall be attached to the forms reporting the test results.

(7) An employee who submits a breath and/or urine sample for a reasonable suspicion drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

J. POST-ACCIDENT TESTING

(1) As soon as practicable following an accident as defined in these regulations, the appropriate department director or designee shall cause the drug/alcohol testing of any safety-sensitive employee whose performance could have contributed to the accident using the best information available at the time of the decision. The employee shall be placed on administrative leave with pay until the test result is available.

(2) The appropriate department director or designee shall ensure that an employee required to be tested under this section is tested as soon as practicable and within eight (8) hours of the accident. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

(3) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(4) In the rare event the City is unable to perform a City drug and alcohol test (i.e. employee is unconscious, employee is detained by law enforcement agency), the City may use drug and alcohol post accident test results administered by State and/or local law enforcement officials in lieu of the City test. The State and/or local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

(4) An employee who submits a breath and/or urine sample for a post-accident drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

K. RANDOM TESTING

(1) Safety-sensitive employees are subject to random selection for drug/alcohol testing with no more than two hours notice.

(2) The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

(a) The dates for administering unannounced testing of randomly-selected employees shall be spread reasonably throughout the calendar year; and,

(b) The number of safety-sensitive employees randomly selected for drug/alcohol testing during the calendar year shall be not less than fifty (50) percent of the total number of employees in the pool.

(3) Each safety-sensitive employee shall be in a pool from which random selection is made. Each safety-sensitive employee in the pool shall have an equal chance of selection and shall remain in the pool, whether or not the employee has been previously tested. There is no discretion on part of management in the selection and notification of the individuals who are to be tested.

(4) There shall be five (5) pools of safety-sensitive employees from which employees can be randomly selected. Each pool shall be maintained separately and no employee may be placed in more than one pool except as noted in subsection d below. The pools shall be designated as follows:

(a) Employees designated as safety-sensitive by Federal Transit Authority regulations;

(b) Employees required to operate a commercial class vehicle (other than Federal Transit Authority designated employees);

(c) Public safety employees;

(d) Police officers whose primary duty is the detection and suppression of drug law violations, who shall be the only employees whose names appear in two pools; and,

(e) All other employees whose position has been designated safety-sensitive by the Director of the Human Resources Department.

L. RETURN-TO-DUTY TESTING

All employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event an employee returns to duty, the provisions of this section apply. All employees who previously tested positive on a drug or alcohol test or refused a test must test negative for drugs, alcohol (below 0.02 for alcohol) or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return to Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return to Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. Before scheduling the return to duty test, the SAP must assess the employee and determine if the required treatment has been properly followed and the SAP has a reasonable level of assurance that the individual will stay drug and alcohol free. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety. An employee who submits a breath and/or urine sample for a return-to-duty drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment. Return-to-duty testing is conducted when an employee is off duty.

M. FOLLOW-UP TESTING

All employees who test positive on a drug and/or alcohol test or refuse to test as defined in this policy shall be terminated. However, in the event an employee returns to duty, the provisions of this section apply. Employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the reasonable suspicion, post-accident, random, and return-to-duty testing program. An employee who submits a breath and/or urine sample for a follow-up drug/alcohol test which is determined to be a positive test result or a refusal to test will be terminated from City employment.

N. RESULT OF DRUG/ALCOHOL TEST

(1) All testing results shall be reported to the Medical Review Officer or his/her designee. If the test results are negative, the Medical Review Officer or designee will notify the appropriate parties to that effect.

(2) If the City's laboratory reports the results as non-negative, the City's Medical Review Officer shall determine the validity of the results and provide the employee with the opportunity to discuss the test results. If the Medical Review Officer finds a valid medical explanation (i.e., prescription, medical treatment) for the non-negative test result, the MRO will verify and report this test as negative and no action will be taken. If the MRO's assessment finds no valid medical explanation for the non-negative result, he/she will verify the test as positive or refusal to test, and copies of the testing records shall be provided to the Substance Abuse Program Manager and the department director.

(3) As soon as practicable after receiving notice of a positive drug and/or alcohol test result, or a test refusal, the department director or designee shall ensure that the employee ceases performing any job function.

(4) The employee shall be referred to a Substance Abuse Professional for an assessment. The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with prohibited drug use or alcohol misuse. The cost of any treatment or rehabilitation will be paid directly by the employee or their insurance provider.

(5) Refusal to test shall be considered both a positive test result and a direct act of insubordination and shall result in termination.

(6) The first instance of a positive test result or a refusal to test from a breath and/or urine sample submitted as the result of a reasonable suspicion, post accident, random, return-to-duty, or follow-up drug and/or alcohol test shall result in termination from City employment.

(7) A voluntary referral or participation in the City Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the City.

(8) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in disciplinary action, up to and including termination.

O. GRIEVANCE AND APPEAL

(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance.

(3) Any employee who questions the results of a required drug test may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by

the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost of the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

(4) An employee who has reason to believe he/she was not properly designated as a safety-sensitive employee subject to drug/alcohol testing shall appeal their safety-sensitive designation to the Director of the Human Resources Department within thirty (30) calendar days of notification that his/her position has been designated as safety-sensitive. The Director of the Human Resources Department shall make an inquiry into the claim and forward his/her determination along with the employee's appeal to the Substance Abuse Policy Review and Appeals Board. Such an appeal shall not be available to police officers, corrections officers, firefighters, and those whose positions were designated safety-sensitive by Federal regulation.

(5) The Substance Abuse Policy Review and Appeals Board shall hear and decide objections to the designation of positions as safety-sensitive. The Board may also review administrative policies concerning substance abuse and drug/alcohol testing and advise the Mayor and City Council regarding such policies.

P. RECORDS RELEASE

(1) Drug/alcohol testing records shall be maintained by the Substance Abuse Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express consent of the tested employee.

(2) Records of a positive drug test result, positive alcohol test result, or a refusal to test shall be released to the employee's department director or designee, Substance Abuse Program Manager, and SAP.

(3) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.

(4) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including and drug or alcohol testing records. Employees have the right to gain access to any pertinent records such as equipment calibration records and records of laboratory certifications. Employees may not have access to follow-up testing plans.

Q. DRUG TESTING PROCEDURES

All drug/alcohol testing shall be conducted in a manner to assure a high degree of accuracy and reliability. All City drug/alcohol testing will be conducted using techniques, equipment, and laboratory facilities which have been approved the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures put forth in 49 CFR Part 40, as amended. Sworn members of the Albuquerque Police Department will be tested consistent with the SAFE TEN procedures in Attachment A. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

R. PROPER APPLICATION OF THE POLICY

The City is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

This Policy was adopted by the City of Albuquerque Chief Administrative Office, pursuant to City Council Bill No. R-237, on _____.



Bruce J. Perlman, Ph.D.
Chief Administrative Officer

PART 1
ATTACHMENT A

**Procedures for SAFE TEN tests for sworn members of
the Albuquerque Police Department**

Positive Tests

1. A licensed physician shall be responsible for receiving laboratory results generated by the City's SAFE TEN drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant bio-medical information. The Medical Review Officer (MRO) contracted by the City to review the positive SAFE 10 drug tests shall be that licensed physician.
2. All procedures for the collection and verification of positive results in SAFE TEN tests will follow the same procedures as in DOT 49 CFR Part 40, as amended with the addition of the following:
 - A. When a police officer has a positive test for any one of the SAFE TEN Drugs, the MRO will contact the employee and verify the test. A verified positive test result will be delivered to Substance Abuse Program Manager, who will notify the Chief of Police.
 - B. If the MRO verifies that the officer has a valid prescription for a SAFE TEN drug, the test will be verified as negative, but the MRO will discuss with the officer the requirement that the officer needs to inform the department that a prescription medication covered under the SAFE TEN testing program is being used, as per APD policy #1-04-7.
 - C. The MRO will inform the officer that the Substance Abuse Program Manager will be notified of the use of medication under SAFE TEN and the possible need to inform the officer's supervisor as per APD policy #1-04-7.
 - D. The MRO will inform the Substance Abuse Program Manager that a police officer has been prescribed medication covered under the SAFE TEN testing program. The Substance Abuse Program Manager designee will contact the immediate supervisor regarding APD policy #1-04-7.

- E. If appropriate, the supervisor may ask for an in-service physical in order to determine fitness for duty. Any one of the Employee Health Center's licensed physicians may conduct this physical. If necessary, the police officer may be assigned alternative duty.

3. Verification of positive results will be based on the following cut off levels:

**Substance Abuse Forensic Evaluation
(SAFE/Non-DHHS)**

<u>Drug</u>	<u>Screening Cut-offs</u>	<u>GC/MS Confirmation Cut-offs</u>
Amphetamines	≤ 1000 ng/mL	500 ng/mL
Barbiturates	≤ 200 ng/mL	200 ng/mL
Benzodiazepines	≤ 200 ng/mL	200 ng/mL
Cannabinoids (Marijuana)	≤ 50 ng/mL	15 ng/mL
Cocaine	≤ 300 ng/mL	150 ng/mL
Methadone	≤ 300 ng/mL	qualitative tests*
Methaqualone	≤ 300 ng/mL	qualitative tests*
Opiates	≤ 300 ng/mL	300 ng/mL
Phencyclidine	≤ 25 ng/mL	25 ng/mL
Propoxyphene	≤ 300 ng/mL	qualitative tests*

*Presence only detected

Negative Tests

1. When a SAFE TEN test is negative, the Substance Abuse Program Manager will initial the results acknowledging receipt and forward the result to the Chief of Police or designee.

Revised 01/04

**PART 1
Attachment B
SYSTEM CONTACTS**

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

City Substance Abuse Program Manager:

Name: Lori Cruz
Title: Manager of the Substance Abuse Program
Address: 1 Civic Plaza NW, 9th Floor Albuquerque, NM 87103
Telephone Number: (505) 768-3080

Medical Review Officer

Name: Dr. William Christenson
Title: Medical Review Officer
Address: 400 Marquette NW, Room B-06 Albuquerque, NM 87103
Telephone Number: (505) 768-4630

Substance Abuse Professional

Name: Adam Stern
Title: Substance Abuse Professional
Address: The Solutions Group
1240 Pennsylvania NE, Suite C
Albuquerque, NM 87110
Telephone Number: (505) 254-3555

DHHS Certified Laboratory: Primary Specimen

Name: SED Medical Laboratories
Certifying Scientist: Director of Toxicology: Martin Brady
Address: 5601 Office Blvd, N.E. Albuquerque, NM 87109-5816
Telephone Number: (505) 727-6300

DHHS Certified Laboratory: Split Specimen

Name: Medtox
Address: 402 West County Rd, Suite D
Saint Paul, MN 55112
Telephone Number: (800) 832-3244

(Revised 8/07)

City of Albuquerque

Substance Abuse Policy Manual

Part 4: Employee Assistance Program

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Voluntary Assistance (Self Referral)	4-1
Grievance and Appeal.....	4-2
Records Release	4-3

**CITY OF ALBUQUERQUE
SUBSTANCE ABUSE POLICY - PART 4
EMPLOYEE ASSISTANCE PROGRAM**

A. PURPOSE

As part of its efforts to promote employee wellness, the City maintains an Employee Assistance Program. The City Council has instructed the Chief Administrative Officer to "create a confidential program allowing and encouraging employees to seek help for substance abuse related problems through the Employee Assistance Program/Substance Abuse Program." The purpose of Part 4 of the Substance Abuse Policy is to implement that instruction in a manner which provides for a safer environment for all employees and the public.

B. VOLUNTARY ASSISTANCE (SELF REFERRAL)

(1) The City encourages employees who believe or suspect they may be abusing a substance to voluntarily refer themselves to the Employee Assistance Program/Substance Abuse Program for assistance. The staff is prepared to confidentially assist employees requesting their services. Employees may self refer at any time except within twenty-four (24) hours after an accident as defined in this policy or after being notified that they must submit to a random, reasonable suspicion, transfer or promotion drug/alcohol test under Parts 1, 2 or 3 of this Substance Abuse Policy Manual. Except as otherwise provided in this policy, employee contacts and services provided to employees shall be kept confidential.

(2) Employees who voluntarily seek assistance for substance abuse may receive, without charge, brief counseling, and/or a treatment assessment with the goal of developing a City recommended treatment program. All of the City's group health insurance plans provide limited benefits to help defray the cost of treatment. Employees should either refer to their schedule of benefits or consult with SAP staff to determine the exact benefits available.

(3) Employees who self refer shall be placed on the appropriate leave status until they are, in the opinion of the City Substance Abuse Professional (SAP), ready and able to return to their assigned job duties without endangering the safety of themselves or others.

(4) All employees who self refer must consent to and submit to a baseline alcohol and/or drug test within 24 hours of self referral and shall be compliant with the City recommended treatment program no later than 90 calendar days after self referral. Compliance with the City recommended treatment program shall mean that the employee has submitted to a return-to-duty drug/alcohol test; the result of that test is negative; the employee is cooperating with his/her City recommended

treatment program; the employee has provided the City with a written return-to-work agreement; and, the SAP has determined that the employee can return to work.

(5) The return-to-work agreement shall require that the employee remain compliant with his/her treatment program and state that non-compliance is grounds for discipline. In addition, the return-to-work agreement shall include an agreement to submit to periodic and unannounced follow-up testing as determined and required by the SAP.

(6) During treatment the employee's leave status shall be as follows. First, accrued leave shall be exhausted and, if insufficient, the employee shall be placed on leave without pay in accordance with the Personnel Rules and Regulations. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

(7) Employees who are not compliant with the City recommended treatment program within 90 calendar days from the date of self referral shall be terminated.

(8) Employees who refuse to submit to a periodic, unannounced follow-up test administered pursuant to a return to work agreement shall be terminated. Refusal to test as defined in Parts 1, 2 and 3 of this policy shall be considered both a positive test result and a direct act of insubordination and shall result in termination.

(9) The first time an employee has a positive test result during the follow-up testing period, he/she will be removed from duty for a minimum of thirty (30) calendar days and placed in appropriate leave status. Employees may only again return to work upon the order of the SAP. Any employee not returned to work by the SAP within 90 calendar days shall be terminated.

(10) The second time an employee has a positive test result during the follow-up testing period, the employee shall be terminated. .

(11) Follow-up testing is separate and in addition to any other testing required by other provisions of this policy and appropriate discipline shall be imposed for positive tests under those provisions without regard to an employee's participation in the self referral program.

C. GRIEVANCE AND APPEAL

(1) The determination by the Medical Review Officer that a drug test is a verified positive test or is a refusal to test is not a medical determination subject to appeal under the Personnel Rules and Regulations.

(2) An employee who is subject to termination or other disciplinary action pursuant to this policy may grieve the termination or other disciplinary action pursuant to the provisions of the Merit System Ordinance.

(3) Any employee who questions the results of a required drug test may

request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the result of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. The City will ensure that the cost of the split specimen is covered in order for a timely analysis of the sample; however, the City will seek reimbursement for the split sample test from the employee.

D. RECORDS RELEASE

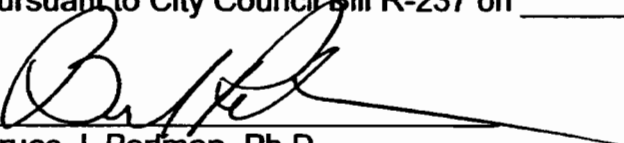
(1) Drug/alcohol testing records shall be maintained by the Substance Abuse Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express consent of the tested employee.

(2) Records of positive tests or refusal to test in the follow-up period shall be released to the employee's department director or designee and the Substance Abuse Program Manager.

(3) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.

(4) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Employee have the right to gain access to any pertinent records such as equipment calibration records and records of laboratory certifications. Employees may not have access to follow-up testing plans. .

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